BILL NO. S-94-12- 18 (as amended)

SPECIAL ORDINANCE NO. S- 93-94

AN ORDINANCE APPROVING AND AUTHORIZING THE PURCHASE OF PUBLIC SAFETY MANAGEMENT SOFTWARE FROM SPILLMAN DATA SYSTEMS, INC. ("SDS").

WHEREAS, the City of Fort Wayne desires to purchase one half of certain Public Safety Computer Software (in conjunction with a one half purchase by Allen County), and implement certain Public Safety Computer Software to increase efficiencies and economies within the Public Safety Division; and

WHEREAS, said economies and efficiencies can best be achieved through the purchase of an integrated Public Safety Computer Software System; and

WHEREAS, SDS is in the business of supplying such software and is experienced in the development, support and management of Public Safety Computer Software Systems; and

WHEREAS, the City of Fort Wayne desires to purchase said software as outlined in a certain Computer Software License Agreement, (Exhibit "A"), and a certain Computer Software Support Agreement, (Exhibit "B"), two copies of each which are on file in the offices of the City Clerk and made available public inspection, according to law.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the proposed contracts, attached hereto and made a part hereof, allowing the purchase and support of said Public Safety Software from SDS are approved and ratified in all Respects. The appropriate City officers are hereby authorized and empowered to sign the same on behalf of the City. The Board of Public Works is further authorized to make minor, inconsequential changes in the language of the contract but shall not amend the purchase amount of basic terms of the agreement.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM
AND LEGALITY

J. TIMOTHY MCCAULAY, CITY ATTORNEY

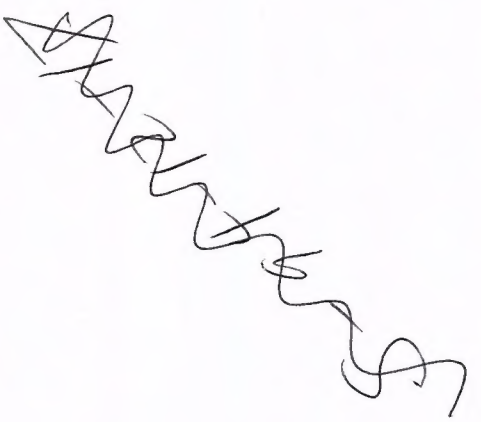
S-94-12-18

Proposed Amendment Language to Spillman Software purchase contract.

At the end of Section one add:

The Board of Public Works is further authorized to make minor, inconsequential changes in the language of the contract but shall not amend the purchase amount or basic terms of the agreement.

Don - This needs to be put at end of Section I on S-94-12-18



The City of Fort Wayne

Paul Helmke, Mayor

MEMORANDUM

BOARD OF PUBLIC SAFETY

TO: MEMBERS OF FORT WAYNE COMMON COUNCIL

FROM: PAYNE BROWN, PUBLIC SAFETY DIRECTOR PDB

DATE: December 12, 1994

SUBJECT: SPILLMAN PUBLIC SAFETY SOFTWARE PURCHASE

The attached Ordinance allows the City of Fort Wayne to enter into a purchase agreement with Spillman Data Systems for Spillman's Public Safety Software. The software purchase will be made in conjunction with Allen County. The City and County will own one half of the software license. The Spillman Data Systems software will provide modern computer automation for the entire Public Safety Division. This will result in increased levels of productivity and functionality within the Division.

PB:DCB

S-94-12-18
as amended

BICENTENNIAL FORT WAYNE 1794 — 1994

COMPUTER SOFTWARE LICENSE AGREEMENT

This License Agreement ("this Agreement") is made and entered into this ___ day of _____ 19__, by and between:

SPILLMAN DATA SYSTEMS, INC. ("SDS")
810 SOUTH 100 WEST
LOGAN, UTAH 84321
(801)753-1610

AND

Allen Co. Computer System Project Building Corp.
One Main Street CICO Bldg Room B16 Attn: Rick Krebs
Fort Wayne, IN 46802
(219) 427-1152

AND

Fort Wayne Board of Public Works
One Main Street
Fort Wayne, IN 46802
(219)-427-1109

Hereinafter "Allen County Department of Public Purchases" and the "Fort Wayne Board of Public Works" will be referred to as "Client".

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF SDS'S OBLIGATIONS AND RESPONSIBILITIES TO CLIENT AND SUPERSEDES ANY OTHER PROPOSAL, REPRESENTATION, OR OTHER COMMUNICATION BY OR ON BEHALF OF SDS RELATING TO THE SUBJECT MATTER HEREOF. CLIENT'S LICENSE OF THE LICENSED PROGRAM WILL NOT COMMENCE UNTIL CLIENT HAS EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF SDS HAS RECEIVED, APPROVED, AND EXECUTED A COPY OF IT AS EXECUTED BY CLIENT.

1. Product. The product is the "Licensed Program," which is defined to be the package of computer software in machine-readable and source code forms and any related user documentation which may be ordered from time to time by Client's acceptance of an SDS Software Order.

2. License. In consideration of the payment of license fees, SDS grants Client a non-exclusive, non-transferable license to use the "Licensed Program", subject to the following terms and conditions.

3. Scope of Rights. Client may:

a. Install the Licensed Program (including source code) in Client's facility.

b. Use the Licensed Program for purposes of serving the internal needs of Client's business.

c. Make one copy of the program in machine-readable form, for nonproductive backup purposes only, provided that SDS's proprietary legend is included.

Client may not use, copy, or modify the Licensed Program, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by SDS. Client's rights may not be transferred. Client may not install the Licensed Program in any other computer system or use it at any other location without SDS's express authorization obtained in advance (which will not be unreasonably withheld). If Client uses, copies, or modifies the Licensed Program or if Client transfers possession of any copy, adaptation, transcription, or merged portion of the Licensed Program to any other party in any way not expressly authorized by SDS, Client's license is automatically terminated.

Client is solely responsible for payment of any taxes (including sales or use taxes and intangible taxes) resulting from Client's acceptance of this license and Client's possession and use of the Licensed Program. SDS reserves the right to have Client pay any such taxes as they fall due to SDS for remittance to the appropriate authority. Client agrees to hold harmless SDS from all claims and liability arising from Client's failure to report or pay such taxes.

Client is responsible for selecting a system administrator who is qualified to operate the Licensed Program on Client's own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program.

Other accessories (hardware or software) may be required for the use of the Licensed Program. Except as agreed otherwise in writing, SDS assumes no responsibility under this Agreement for obtaining or supporting such accessories. Client is also responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program operates, including an uninterrupted power supply.

Client is responsible for converting Client's own data files for use with the Licensed Program.

4. Proprietary Protection of Licensed Program. SDS shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Program and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted by SDS. This Agreement does not provide Client with title or ownership of the Licensed Program, but only a right of limited use. Client must keep the Licensed Program free and clear of all claims, liens, and encumbrances.

The Licensed Program is a commercially valuable, proprietary product of SDS, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. The Licensed Program is treated by SDS as confidential and contains substantial trade secrets of SDS, which SDS has entrusted to Client in confidence to use only as expressly authorized. SDS claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Licensed Program, and in all system documentation related thereto, as unpublished works.

It is Clients intention to eventually be self supporting in terms of software maintenance and new module develop and coding. At such time the Software Support Agreement between SDS and Client will be renegotiated and Client will retain ownership rights to any and all software modules Client develops, designs, and codes. Client also agrees to negotiate contracts with SDS that would allow SDS to utilize any module Client may have developed, designed, and coded in the baseline software package SDS is marketing.

Client may not, at any time, disclose or disseminate the Licensed Program to any person who does not need to obtain access thereto consistent with your rights under this Agreement. Under no circumstances may Client disclose or disseminate the Licensed Program to any competitor of SDS. Client will devote Client's best efforts to ensure that all Client's personnel and all other persons afforded access to the Licensed Program shall protect it against improper use, dissemination, or disclosure.

Client hereby authorize SDS to enter Client's premises in order to inspect the Licensed Program in any reasonable manner during regular business hours.

Client acknowledges that, in the event of Client's breach of any of the foregoing provisions, SDS shall be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. SDS's right to obtain injunctive relief shall not limit its right to seek further remedies in money or damages.

Clients obligations hereunder shall remain in effect for as long as Client continues to possess or use the Licensed program or any trade secrets derived therefrom.

5. Documentation. SDS agrees to allow Client to use SPILLMAN Data copyrighted documentation of the SPILLMAN Public Safety Software system to photocopy as many copies of the SPILLMAN documentation as the agency requires for agency use only in the use of the SPILLMAN Public Safety Software system, to not distribute any original or copy of documentation outside of the agency, and to not reveal this documentation to competitors of SDS.

6. Payment for Goods. The total fee, as set forth in an SDS Software Order, shall be paid to SDS according to the following schedule:

Software price	50% Upon successful porting to DEC platform
	25% Upon installation of software on Client's computer
	25% Upon customer acceptance
Project management	100% Upon successful porting to DEC platform
Pre-Installation meeting	100 % Upon successful porting to DEC platform
Fees for services	Upon completion of the service
Equipment price	Upon delivery of each equipment component to Client's site

SDS agrees to initiate the porting of SDS software to the DEC hardware platform to be utilized by Client upon contract signing and to complete the porting process as soon as possible, allowing Client final acceptance of the ported software on the DEC platform. Final acceptance of the ported software will be based on the successful demonstration of basic system functionality on the DEC platform.

In order to initiate payment, SDS shall file the appropriate claim form with client for that work performed by SDS. Client shall promptly process the claim and SDS shall receive payment of all uncontested amounts within 60 days of the claim date. All payments will be subject to available funding.

7. Limited Warranty. SDS warrants, for Client's benefit alone, that the Licensed Program conforms in all material respects to the specifications for the current version of the Licensed Program as described in SDS product specifications as of this date and for a period of one (1) year hereafter. This warranty is expressly conditioned on Client's observance of the operating, security, and data-control procedures set forth in the User's Manual(s) included with the Licensed Program.

SDS is not responsible for obsolescence of the Licensed Program that may result from changes in Client's requirements. The foregoing warranty shall apply only to the most current version of the Licensed Program issued by SDS from time to time. SDS assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Licensed Program.

8. Customer Remedies. As Client's exclusive remedy for any material nonconformity or defect in the Licensed Program for which SDS is responsible, SDS shall attempt through reasonable effort to correct or cure

such nonconformity or defect. However, SDS shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Program if Client has made any changes to the Licensed Program that SDS was not made aware of, if the Licensed Program has been misused or damaged in any respect, or if Client has not reported to SDS the existence and nature of such nonconformity or defect promptly upon discovery thereof. If only SDS has made changes to the Licensed Programs, and SDS cannot make Licensed Programs conform to specifications, SDS will refund the amounts specifically related to the Licensed Program and any reasonable costs client may have incurred in attempting to utilize the Licensed Program at SDS's direction during the twelve (12) month period immediately following contract signing.

The cumulative liability of SDS to Client for all claims related to the Licensed Program and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all fees and charges paid to SDS hereunder and any reasonable costs Client may have incurred in attempting to utilize the Licensed Programs at SDS's direction during the twelve (12) month period immediately following contract signing. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective. This limitation shall not apply to claims for personal injury or property damage.

9. No Other Warranties. SDS disclaims all other warranties, either expressed or implied and representations with respect to the licensed program, including its condition, its conformity to any representation or description, the existence of any latent or patent defects, and its merchantability or fitness for a particular use.

10. No Liability for Consequential Damages. In no event shall SDS be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Client, even if SDS has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to which other provisions of this Agreement have been breached or have proven ineffective.

11. Term. Client's license of the Licensed Program shall become effective upon delivery of the Licensed Program to Client and shall continue unless terminated as provided herein.

Client may terminate this agreement at any time upon written notice to SDS.

Upon termination of this Agreement, all rights granted to Client will terminate and revert to SDS. Promptly upon termination of this Agreement for any reason or upon discontinuance or abandonment of your possession or use of the Licensed Program, Client must return, or certify the destruction of, all copies of the Licensed Program in Client's possession (whether modified or unmodified), and all other materials pertaining to the Licensed Program (including all copies thereof).

12. General. No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against who enforcement of the modification is sought.
Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed.

In the event that any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.

SDS WANTS CLIENT TO BE CONFIDENT THAT THE LICENSED PROGRAM WILL SUIT CLIENTS NEEDS. ALTHOUGH CLIENT MUST MAKE THAT DETERMINATION, SDS IS PREPARED TO FULLY DISCUSS THE LICENSED PROGRAM WITH CLIENT AND ANSWER CLIENTS QUESTIONS. BY EXECUTING THIS AGREEMENT, CLIENT ACKNOWLEDGES THAT CLIENT HAS BEEN GIVEN AN ADEQUATE OPPORTUNITY TO INVESTIGATE CLIENTS COMPUTER AND SOFTWARE NEEDS AND THAT BASED ON CLIENTS EXAMINATION OF THE LICENSED PROGRAM, THE LICENSED PROGRAM IS SATISFACTORY.

Accepted and Approved by Client:

Accepted and Approved by SDS:

Read the first time in full and on motion by Edmonds, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and ~~Public Hearing~~ to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____ M., E.S.T.

DATED: 12-13-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	5			4
BRADBURY				✓
EDMONDS	✓			
GiaQUINTA	✓			
HENRY				✓
LONG				✓
LUNSEY	✓			
RAVINE				✓
SCHMIDT	✓			
TALARICO	✓			

DATED: 12-20-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ANNEXATION~~) (APPROPRIATION) (~~GENERAL~~) (~~SPECIAL~~ Special) (~~ZONING~~) ORDINANCE ~~RESOLUTION~~ NO. S-93-94 on the 20th day of December, 19 94

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 21st day of December, 1994, at the hour of 10:30 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 22nd day of December, 19 94, at the hour of 10:40 o'clock A M., E.S.T.

PAUL HELMKE, MAYOR

BILL NO. S-94-12-18

REPORT OF THE COMMITTEE ON
FINANCE
CLETUS R. EDMONDS - DONALD J. SCHMIDT - CO-CHAIR
ARCHIE L. LUNSEY
DAVID C. LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving and authorizing the purchase of Public Safety Managment Software from Spillman Data Systems, INC. ("SDS")

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Cletus R Edmonds			

DATED: 12-20-94

Sandra E. Kennedy
City Clerk